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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

KISHORE, GOLLAMUDI S

ART UNIT PAPER NUMBER

1615

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,490

Applicant(s)

NIEMIEC ET AL.

Examiner

Gollamudi S. Kishore, Ph.D

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-16, 23 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-16, 23 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment dated 8-8-05 is acknowledged.

Claims included in the prosecution are 14-16, 23 and 34.

In view of the amendments, the 102 (b) and the 103 rejections over Hayward; WO 95 in combination with either Dodd or Schueller and WO 95/23578 in combination with either Dodd (5,674,478) or Schueller (5,306,434) as set forth above, further in view of Mathur. are withdrawn.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 14-16, 23 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathur (5,643,600) in combination with either Dodd (5,674,478) or Schueller (5,306,434).

Mathur discloses hair-conditioning compositions containing lipid vesicles. The lipid vesicles are made of glyceryl mono and diesters and further contain cholesterol and sodium lauryl sulfate (abstract, col. 3, lines 8-32, Examples 1, 2 and 5). What is lacking in Mathur is the teaching of silicones and PVP as the conditioning agents.

As pointed out above, Dodd (5,674,478) while disclosing hair care compositions teaches that silicones and PVP are hair conditioners (abstract, col. 7, line 8 through col. 10, line 23).

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Similarly, Schueller teaches silicones and PVP as hair conditioners (abstract and columns 2-4).

The use of silicones and/or PVP as the conditioning agents in the liposomal compositions of Mathur would have been obvious to one of ordinary skill in the art since these are art well-known hair conditioning agents as evident from Dodd or Schueller. Alternately, to encapsulate the hair conditioning agents of Dodd or Schueller in the liposomes of Mathur would have been obvious to one of ordinary skill in the art because of the exceptional properties of vesicles in moisturizing properties and delivery of active agents as taught by Mathur.

Applicant's arguments have been fully considered, but are not found to be persuasive. Applicant points out col. 2, lines 34-36 of Mathur and argues that Mathur specifically teaches the drawbacks of using cholesterol in lipid vesicles. This argument is not persuasive since Mathur's comments at this location only pertain to ***most edible and pharmaceutical preparations*** and not to cosmetic compositions for hair. Applicant argues that in Example 1 of Mathur, vehicle D is the only formulation containing a sterol, i.e., cholesterol and that Mathur specifically teaches that vehicle D was not as homogeneous as vehicle A which did not contain cholesterol and therefore, one of ordinary skill in the art would not have found it obvious from the teachings of Mathur to incorporate a sterol such as cholesterol into the lipid vesicles of Mathur. This argument is not persuasive since instant claims do not require that the composition be homogenous. Applicant further argues that there is no teaching or suggestion in Mathur of a composition comprising a conditioning polymer encapsulated in a lipid vesicle

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wherein said lipid vesicle comprises a mixture of dual chain lipid which is a glyceryl diester, an alkoxylated amine or a mixture thereof, and a single chain lipid which is a glyceryl monoester, a polyoxyethylene fatty ether or a

3. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gollamudi S. Kishore, Ph.D whose telephone number is (571) 272-0598. The examiner can normally be reached on 6:30 AM- 4 PM, alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gollamudi S Kishore, Ph.D
Primary Examiner
Art Unit 1615

GSK